

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 681

Case No. 89-25

(Downtown Development

District - Text and Map Amendment)

December 17, 1990

The Zoning Commission for the District of Columbia initiated this case to consider and adopt appropriate amendments to the Zoning Regulations to further certain of the development policies and land use objectives that are contained in the Land Use and Downtown Plan Elements of the Comprehensive Plan for the National Capital.

The particular focal points of this proceeding are sections 902 through 915 (Downtown land use objective and supporting policies; and Downtown Retail, Residential, Hotel, Private Office, Arts, Cultural, Entertainment, and other land use objectives, and supporting policies); Sections 922 through 925 (Downtown Historic Preservation objectives and policies); Sections 939 and 940 (Downtown Economic objectives and supporting policies); Sections 951 and 952 (Downtown Retail Core objectives and supporting policies); Sections 953 through 962 (Gallery Place, Chinatown, Convention Center Area, Pennsylvania Avenue West, and Market Square objectives and supporting policies); Sections 965 and 966 (Mount Vernon Square objectives and supporting policies); Sections 981 and 982 (Downtown Zoning and Other Land Use Controls objectives and supporting policies); Section 1127 (Chinatown Special Treatment Area); and Sections 1129 and 1130 (Downtown Arts District objectives and supporting policies).

The Zoning Commission has given due consideration to D.C. Law 8-129, the District of Columbia Comprehensive Plan Amendments Act of 1989. By D.C. Law 8-129, the Council adopted a number of amendments to the District of Columbia Comprehensive Plan. In no respect, however, did it amend any of the cited sections. Indeed, the Council adopted no amendment - none - to Title IX of the Comprehensive Plan, that is, the Downtown Plan Element.

As the Commission observed in Zoning Commission Order No. 609 (Z.C. Case No. 88-7; Downtown SHOP - Text and Map Amendments):

The policies by which the Commission must be guided have been adopted. It is evident that the Executive Branch and Council considered them with care. The charge of the Zoning Commission is not to assess and revise those policies, but to implement them, by adopting Zoning Regulations that are not inconsistent with the established objectives and policies for ... Downtown.

Of particular import for the Commission's deliberations are Sections 981 and 982 of the Comprehensive Plan:

Sec. 981 Downtown
Zoning and
Other Land Use
Controls
Objectives

The Downtown zoning and other
land use controls objectives
are to:

- (1) Select zone districts and zoning techniques that are consistent with the Downtown Element; and
- (2) Use public development sites to achieve the objectives of the Downtown Element.

Sec. 982.
Policies in
Support of the
Downtown Zoning
and Other Land
Use Controls
Objectives

The policies established in support of
the Downtown zoning and other use con-
trols objectives are as follows:

- (1) Recommend zoning for Downtown that takes into account the targets of the Downtown land use objectives;
- (2) Prepare new zoning regulations that provide appropriate incentives for key land uses, such as residential, hotel, theater and arts-related facilities, and historic preservation;
- (3) Consider including performance bonuses and administrative reviews wherever possible in the Zoning Regulations of the District of Columbia that provide for incentives;
- (4) Use appropriate zoning text and map

changes, including overlay zones, to achieve Downtown Element objectives, including but not limited to the following:

- (A) Obtaining mixed-use development with residential development south of Massachusetts Avenue;
 - (B) Obtaining mixed-use development west and south of Mount Vernon Square, to Pennsylvania Avenue, N.W., using office development where appropriate as a catalyst for new housing and hotels;
 - (C) Obtaining retail use, especially on the ground floor, in the retail core, Gallery Place, Market Square, and Chinatown subareas;
 - (D) Obtaining arts and entertainment use in the Gallery Place area and portions of the retail core and Chinatown;
- (5) Provide that the Zoning Regulations of the District of Columbia applicable to the retail core and other areas of Downtown where retail uses are to be concentrated should implement the desired objectives by requiring that a portion of the building space be devoted to retail use, and by including standards for frontages (These standards should foster active, street-oriented retail uses on the ground floors of selected streets.); and
- (6) Use the opportunity of public development sites, such as urban renewal sites, WMATA joint development sites, University of the District of Columbia site, and PADC sites, to implement key objectives and policies of the Downtown

Element, especially with respect to
Downtown land use and design.

On November 17, 1989, the Office of Planning submitted proposed amendments to the Zoning Regulations and Map to establish a Downtown Development District ("DDD"). The Commission determined that the Office of Planning proposal presented a sound basis for the consideration of amendments, and decided on December 14, 1989, to set the proposal for hearing, together with certain elements of alternative proposals that had been submitted by the D.C. Preservation League, the Downtown Cluster of Congregations, and the National Capital Area Chapter of the American Planning Association.

Beginning on February 22, 1990, the Commission conducted 9 hearing sessions in this proceeding, in the course of which 134 witnesses spoke and the total pages of the several transcripts reached 1,498. In addition, after preliminary development of proposed revisions to the proposal, the Commission invited additional written public comments on the revised proposals for residential and mixed-use development. This comment period began on July 16, 1990, and extended until September 11, 1990.

Notice of Proposed Rulemaking was published in the D.C. Register on October 26, 1990. The notice established a deadline of November 26, 1990 for the submission of written comments. The deadline was extended to December 3, 1990, except that the Council was allowed until December 12, 1990, to submit its comments. On October 24, 1990, the Zoning Commission referred the proposed amendments to the National Capital Planning Commission ("NCPC") for review and comment. By report dated December 6, 1990, NCPC found that the objectives of the proposed text amendment and mapping are not inconsistent with the Comprehensive Plan for the National Capital, but at this time, in the absence of actual physical proposals, NCPC is unable to assess the impact that the development requirements may have on the Federal establishment or other Federal interests in the National Capital.

The issues that confront the Zoning Commission in this case present choices among competing public policies that all have merit. The choice is not among several policies that are wrongly motivated and one that is salutary.

As framed by the record in this proceeding, the central thrust of the varying contentions that have been presented is as follows:

- ~ The case is simple: The Zoning Commission must simply follow the Comprehensive Plan, and adopt

Zoning Regulations that will follow the Plan's clear directions about housing, historic preservation, arts and related uses, and other mixed use goals and objectives.

- ~ The Plan's goals and objectives, albeit worthy, are not realistic, and cannot be achieved without major public subsidies in addition to zoning bonuses and incentives. Zoning cannot do it alone.
- ~ As proposed, the DDD regulations would be unreasonably destructive of land values.
- ~ To the extent that commercial development in the proposed DDD area is able to generate funds for housing, the funds should be allocated for affordable housing and, in particular, for the development of affordable housing in areas where it will be less costly than in the DDD area.

The Commission has considered these arguments with care, and to the extent that it concludes that it can find authority in the Comprehensive Plan, it has developed a zoning regulation that accommodates those concerns. To some extent, those concerns may have to be presented to the legislative body for further resolution.

The policy that the Zoning Commission undertakes to implement is one that the Commission is not free to reject or to revise. That authority rests elsewhere. And it is clear that the Commission may not look to the Plan's broadly-stated goals and objectives in various areas of public policy as overriding explicitly-stated land use goals and objectives for the Downtown area. If the Commission were to do so, it would use the Plan to destroy the Plan. This the Commission will not do.

The proposed rulemaking responded to a number of concerns that were expressed during the public hearings about various specific provisions of the text. Those changes will not be set forth in detail here.

Comments on the proposed rulemaking have presented a number of specific issues for the Commission to consider, and the Commission has examined those issues. In this Order, the Commission discusses the issues of primary importance. Although it has considered the other matters, it has determined that explicit comment is not required about each point.

The Commission has determined to allow increased floor area in the DDD, and to increase the proportion of off-site housing available in connection with projects to the south of Massachusetts Avenue. The Commission has concluded that this adjustment remains faithful to the mandate of the Comprehensive Plan, and responds to concerns about affordable housing and the viability of the DDD amendments.

A number of comments urge exemptions or other special treatment for particular squares. Except for a relatively small number of sites that are subject to the authority of the Pennsylvania Avenue Development Corporation ("PADC"), the Commission has concluded that specialized treatment to accommodate particular sites would not be reasonable. As to the PADC squares, the Commission will issue a further notice of proposed rulemaking.

The Commission has determined to amend the language of proposed subsection 1707.4 to allow composite FAR for combined development sites in the historic area.

The Commission is not persuaded that subsection 1700.6, as adopted, is beyond the scope of the notice of public hearing. The public hearing notice alerted all interested persons to a comprehensive proposal. The Commission received documents and heard testimony that was fully as comprehensive. The public hearing notice squarely framed the central issue: What Zoning Regulations would reasonably implement the goals and policies of the District for the Downtown area? Persons from varying perspectives, including the development community, presented alternatives that were different from the explicit text, but which were without doubt, "reasonably related to" the text and other matters set forth in the hearing notice.

The Commission also believes that the D.C. Administrative Procedure Act provides procedures that supplement those set forth in the Zoning Act. That is, the notice of proposed rulemaking provided an additional process for addressing the specific proposed amendments to the Zoning Regulations that were developed or refined through the hearing process.

Another concern related to the elimination of the bonus ratio factor for transferred development rights (TDR's). This proposed change responded to the expressed views that too many TDRs would be created for the available development sites, and that the DDD text should be shortened, simplified, and clarified.

A comment suggests that this change would be beyond the scope of the public hearing notice. The Commission is not

persuaded that this is so. The public hearing notice set forth the entire proposed text of Chapter 17, and also said:

The Zoning Commission will consider the OP proposal, certain alternatives that are set forth in this notice, any modification thereto, or alternative proposals that are presented and reasonably related to matters that are set forth in this notice.

Participants in the hearing certainly recognized that TDR transfer ratios were reasonably related to the proposal, and those ratios were discussed. In fact, the commentators that press the notice issue observed the following in comments submitted on April 6:

It is... extremely important to bring the supply and demand for bonus development into a different balance. The most pressing need is to create additional receiving areas where the development rights can be used. However, with particular regard to the historic preservation issue, the balance can be helped by reducing the potential supply of TDRs by allowing a greater level of on-site development...

Suffice it to say, if the notice of public hearings reasonably presented an issue about the balance between the supply of and demand for TDRs, and a reduction of the supply of TDRs as an answer, then it afforded notice that the Zoning Commission would address such issues.

The Commission has fully considered Council Resolution 8-318, in which the Council expressed its opinion about the proposed action of the Commission. The Commission welcomes the engaged deliberations of the Council in the planning and zoning process. The Commission and the Council share the responsibility and authority in this process in a way that is different from that of all other participants: the Council and the Commission make the decisions that will take effect; others may help, guide, exhort, lobby, cajole, criticize, declaim, or press the case in all public forums; however, the Council decides and acts, and this Commission decides and acts.

It is for those reasons, and in the spirit of welcoming guidance from the body with which the Commission shares its task, that the Commission has considered Council Resolution 8-318.

The Commission has had a full opportunity during the proceedings in this case to reflect upon the premises for the Resolution, which are set forth in it, because others have

presented substantially similar views to the Commission.

Participants in this proceeding must accept, as this Commission must accept, the unequivocal premise that the Comprehensive Plan is the lodestar for the Commission. It is not enough for others to suggest that the Commission should, or may, establish another zoning policy that is superior to the one that is set forth in the Comprehensive Plan. This the Commission clearly may not do. The Commission must be guided by the Plan, and with a genuine disposition to effect the goals and policies that the Plan establishes.

The Commission recognizes that implementation of the Downtown Development District will be demanding. It will demand resourcefulness and discipline from developers and from the District government. The case is made persuasively that zoning can not do it alone, that subsidies beyond zoning incentives may be needed. Other regulations may need reconsideration to provide greater incentives. But from zoning "can not do it alone," it does not follow that zoning should do nothing. And, above all, it does not follow that the Zoning Commission, charged as it is with adopting Zoning Regulations that are not inconsistent with the Comprehensive Plan, may evade that obligation simply because other implementing action, beyond the Commission's authority, may also be reasonably required. The District Charter does not provide that the Zoning Regulations shall not be inconsistent with the Comprehensive Plan only when "zoning can do it alone."

The Commission reads the Comprehensive Plan as requiring the Zoning Commission to exercise the zoning power to adopt zoning regulations that are appropriate to achieve the Downtown Element land use objectives and which take into account the targets of those objectives. This the Commission does by its approval of final action in this order.

The Commission thanks all participants in this proceeding for their work and engaged participation. The Commission anticipates that the Council, Executive Branch, and other participants may wish to reflect further on the Downtown Element and its relation to the general Land Use Element. The Commission would fully welcome any further development and refinement in the Comprehensive Plan of the goals and policies that are at hand in this proceeding. And if the Council amends the Comprehensive Plan so as to require further consideration by this Commission, the Commission will act timely, and once more with a genuine disposition to effect the goals and policies that the Comprehensive Plan establishes.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments of the Zoning Regulations and Map to establish and map a Downtown Development District. The specific amendments are as follows:

1. Revise Title 11, District of Columbia Municipal Regulations (The Zoning Regulations), Chapter 17, to read as follows:

Chapter 17 DOWNTOWN DEVELOPMENT DISTRICT

1700 GENERAL PROVISIONS

1700.1 The Downtown Development (DD) District is applied to the core of the Downtown area, including subareas identified in the Comprehensive Plan as the Retail Core (Shopping District), the Arts District, Gallery Place, Chinatown, Market Square, Convention Center, and Mount Vernon Square. Also encompassed in this core Downtown area are areas designated for historic preservation and housing-mixed use, which areas overlap geographically with the subareas. The boundaries of the DD District are indicated in Map A, which is appended to this chapter. All street locations in this overlay zone are in N.W. Washington.

1700.2 The purpose of the Downtown Development District is to help accomplish the land use and development policies of the Comprehensive Plan relating to the affected sectors of Downtown. The adopted planning policies for this area are primarily contained in 10 DCMR, Chapter 9, Downtown Plan and 10 DCMR, Chapter 10, Land Use. Some of the most important general purposes are to:

- (a) Create a balanced mixture of uses by means of incentives and requirements for critically important land uses identified in the Plan, including retail, hotel, residential, entertainment, arts and cultural uses;
- (b) Guide and regulate office development, which is generally favored by market forces over the other desired uses, so as to further the land use objectives for retail, hotel,

residential, entertainment, arts and cultural uses;

- (c) Protect historic buildings and places while permitting sensitive and compatible new development subject to the historic preservation review process of D.C. Law 2-144;
- (d) Substantially achieve the specific land use and development policies for the following Downtown subareas: Retail Core, Gallery Place, Convention Center, Chinatown, Pennsylvania Avenue West, Market Square, Mount Vernon Square, and Judiciary Square;
- (e) Guide the design of buildings to be generally consistent with the urban design, street orientation and design, and historic preservation policies of the Downtown Element of the Comprehensive Plan;
- (f) Foster growth opportunities for and retention of small and minority businesses; and
- (g) Provide adequate and visually acceptable short-term parking and consolidated loading facilities having access primarily from streets other than F, G, and 7th Streets.

1700.3 The Downtown Development District and the underlying zoning shall together constitute the zoning regulations for the geographic area referred to in Subsection 1700.1. Where there are conflicts between this chapter and the underlying zoning, the provisions of the DD overlay shall govern.

1700.4 The requirements and incentives of this chapter shall apply to all new buildings and to all other buildings where any additions, alterations or repairs within any twelve (12) month period exceed one hundred percent (100%) of the assessed value of the building as set forth in the records of the Office of Property Assessment as of the date of the building permit application; provided that:

- a) The cost basis for alterations or additions to an existing building shall be the amount indicated by the applicant on the application for a building permit;

- b) The assessed value of the building shall be the value as set forth in records of the Office of Property Assessment as of the date of the building permit application; and
- c) In the case of an addition, the requirements and incentives of this chapter shall apply only to the addition.

1700.5 An applicant for a building permit or a certificate of occupancy involving 10,000 square feet or more of gross floor area within the DD District shall provide a copy of the application, or of those portions of the application affected by the DD overlay zone provisions, to the Director, Office of Planning, at the time of filing with the Zoning Administrator; the Director, Office of Planning shall, within ten (10) days of the filing, provide the Zoning Administrator with a memorandum setting forth the Director's interpretation of DD requirements, incentives and other effects.

1700.6 A Planned Unit Development in the DD District shall be subject to the following provisions in addition to those of Chapter 24 of this title:

- (a) The PUD shall only be granted for projects that are superior in achieving the purposes of this chapter and the adopted objectives and policies of the Downtown Element of the Comprehensive Plan;
- (b) The PUD process shall not be used to reduce requirements in this chapter for housing or preferred uses, specifically retail, service, entertainment, arts and residential uses;
- (c) Except as provided in Sub-section 1706.7 the guideline FAR for a PUD may be granted only after the applicant has demonstrated to the Zoning Commission that transferable development rights have been purchased to the maximum feasible extent prior to the request for additional density in excess of that amount; and
- (d) Notwithstanding paragraphs (b) and (c) of this sub-section, if a planned unit development is proposed to govern development

of the University of the District of Columbia campus and other uses in Squares 401, 402, 425 and 426, the PUD shall be guided by the applicable policies of the Comprehensive Plan.

1701 AREA-WIDE DESIGN STANDARDS

- 1701.1 The floor area ratio credit for open arcades as provided in Section 2515 of this title is not applicable in the DD District.
- 1701.2 Any open arcade in the DD District shall extend the length of an entire block frontage, or shall connect with an open arcade in an abutting building in such fashion as to provide a continuous walkway.
- 1701.3 Not less than seventy-five percent (75%) of each streetwall of new construction to a height of not less than fifteen feet (15') shall be constructed to, or within four feet (4') of, the property line between the subject lot and each abutting street right-of-way.
- 1701.4 Along the following street frontages the provisions of Subsection 2117.8(c)(1) of this title are modified so as to prohibit the construction or use of a driveway providing access from the adjacent public street to required parking spaces or loading berths on the subject lot:
- (a) F Street, N.W., from 7th to 15th Streets;
 - (b) G Street, N.W., from 7th to 15th Streets;
 - (c) 10th Street, N.W., from E to F Streets;
 - (d) 7th Street, N.W., from Pennsylvania Avenue to Mount Vernon Square;
 - (e) H Street, N.W., from 5th to 8th Streets;
 - (f) Pennsylvania Avenue, N.W., from 6th to 15th Streets; and
 - (g) Indiana Avenue, N.W., from 6th to 7th Streets.
- 1701.5 Along the street frontages listed in Subsection 1701.4, and those listed in paragraph (c) below, not less than fifty percent (50%) of the surface area of any streetwall at the ground floor level of each building shall be devoted to display

windows and to entrances to commercial uses or to the building; provided, that:

- (a) Such windows shall use clear, or low emissivity glass, except for decorative or architectural accent;
- (b) Entrances to the building, excluding vehicular entrances, shall be separated by not more than fifty feet (50') on average for the linear frontage of the building; and
- (c) The additional applicable street frontages shall be E Street, N.W., from 6th to 14th Streets; 10th through 13th Streets, N.W., from E to H Streets; 9th Street, N.W., from E to I Streets; 14th and 15th Streets, N.W., from Pennsylvania Avenue to New York Avenue; I Street, N.W., from 5th to 7th Streets; and 8th Street, from Pennsylvania Avenue to Mt. Vernon Square.

1701.6 The requirements of Subsections 1701.1 through 1701.5 shall not apply to a department store, theater, hotel, apartment house, or church or other place of worship.

1701.7 Except in the underlying R-5-B, R-5-D, C-2-A, and C-3-A Districts, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; provided, that a building that fronts on Massachusetts Avenue or on Mount Vernon Square shall be designed and built so that no part of the building shall project above a plane drawn at a forty-five (45) degree angle from a line located one hundred ten feet (110') above the property line abutting Massachusetts Avenue or Mount Vernon Square.

1702 AREA-WIDE USE PROVISIONS

1702.1 Each building that faces or abuts a street segment identified in Subsection 1701.4 or 1701.5 shall devote not less than fifty percent (50%) of the gross floor area of the ground floor to permitted retail, service, arts and entertainment uses listed in Subsections 1710.1 and 1711.1; provided that:

- (a) Not more than twenty percent (20%) of the required ground level space shall be occupied by banks, loan offices, other financial institutions, travel agencies, or other transportation ticket offices;
- (b) The uses specified in paragraph (a) shall account for no more than thirty percent (30%) of the total space requirement for commercial preferred uses in a building, as provided in Sections 1703 through 1705 of this chapter; and
- (c) This ground level use requirement shall not apply to a building that is entirely devoted to hotel or apartment house use, or to a church or other place of worship.

1702.2 Each building shall provide on-site or account for off-site, gross floor area equivalent devoted to preferred uses; provided that:

- (a) Preferred uses shall be provided and located according to the guidelines by Downtown Subarea as set forth in Sections 1703 through 1706 of this chapter;
- (b) For the purposes of this chapter, cellar space devoted to preferred uses other than residential uses shall count towards the minimum requirement without affecting the permitted maximum bulk of the building;
- (c) The net leasable area occupied by the required preferred uses shall be no less than eighty percent (80%) of the gross floor area allocated to these uses; and
- (d) The uses listed in Subsection 1712.1 are deemed office uses in the DD District for purposes of FAR computations.

1702.3 A child development center or a child development home shall count at one-and-one-half (1 1/2) times its actual gross floor area towards the nonresidential preferred use requirement of any subarea; provided, that the child development center will be open and operating during normal business hours at least five (5) days each week and fifty (50) weeks each calendar year, excluding public holidays.

1702.4 An existing department store, theater, hotel or apartment house shall not be converted in whole or in part to another use, nor be replaced by other uses occupying a new building on the same lot unless such conversion or replacement has been reviewed and approved by the Board of Zoning Adjustment pursuant to Subsection 3107.2 of this title.

1702.5 If a church or other place of worship that is in use on the effective date of this chapter is later included in a redevelopment, the portion that continues as a church or place of worship shall be exempt from the requirements of this section.

1702.6 A parking lot, parking garage, or parking spaces at or above grade in a building, shall be permitted as follows:

- (a) The parking facility shall be permitted as a matter-of-right if it provides only short-term parking and all of the parking spaces are leased to merchants or a park-and-shop organization;
- (b) The parking facility shall be permitted as a matter-of-right if it provides parking only for residents; and
- (c) The parking facility shall require Board of Zoning Adjustment approval pursuant to Subsection 3107.2 of this title if it provides all-day, commuter parking.

1702.7 A building in Square 404 excluding Lot 813 or in Square 405 north of a line extending the midpoint of G Place eastward from 9th to 8th Street, which properties are outside the subarea boundaries provided in Sections 1703 through 1706, shall provide preferred uses according to one of the following provisions, at the election of the property owner:

- (a) Preferred uses may be provided according to the requirements and incentives of any one of the following sections: 1703, 1704, 1705 or 1706;
- (b) As an alternative to paragraph (a), the property owner may develop not less than 1.5 FAR of bonus office density received from

another site or sites within the DD District, pursuant to the provisions of Section 1709; and

- (c) If bonus density is developed pursuant to paragraph (a) or transferable development rights pursuant to paragraph (b), the maximum permitted FAR shall be 9.5 in Square 405 and 8.5 in Square 404.

1703 DOWNTOWN SHOPPING DISTRICT

1703.1 The principal policies and objectives for the Downtown Shopping District (SHOP), or Retail Core, derived from the Comprehensive Plan, are to:

- (a) Create the most concentrated area of retail, service, arts, and entertainment uses in Downtown, in excess of one floor of these uses, with the greatest retail concentration oriented to F and G Streets, N.W.;
- (b) Strengthen the character and identity of the District by means of physical design standards which ensure the following:
 - (1) New Buildings constructed to the property line and primarily oriented to the street rather than to internal spaces;
 - (2) Continuous retail, service, and entertainment uses on the ground level of buildings, with ample display windows and frequent store entrances to the outdoor pedestrian circulation system; and
 - (3) A pedestrian environment with ample sidewalks interrupted by a minimum of vehicular driveways, especially along F and G Streets.

1703.2 The provisions of this section apply to the general area identified in the Comprehensive Plan as the Retail Core, or Downtown Shopping District, comprising squares 223, 224, 225, 252, 253, 254, 288, 289, 290, 319, 320, 321, 345, 346, 347, 375, 376, and 377. This area is bounded by H Street

and New York Avenue, N.W. on the north, E Street and Pennsylvania Avenue on the south, 9th Street on the east, and 15th Street on the west.

1703.3 Each new or altered building shall devote not less than either 1.5 or 2.0 FAR equivalent to retail and personal service uses listed in Section 1710 or the arts uses listed in Section 1711; provided, that:

- (a) For the purposes of this chapter, space devoted to preferred uses in cellar space shall count towards meeting the minimum requirement without affecting the permitted maximum bulk of the building;
- (b) The 2.0 FAR equivalent in preferred uses shall apply to the following squares and portions of squares: Square 375 (northern half, that is, north of G Place), Square 346, Square 320, Square 321, Square 319 (southern half, that is Lot 29), Square 288 (southern half, that is Lot 56 only), Square 289, Square 253, Square 254 (northern half, that is, Lot 53 and that part of Lot 835 which is north of the eastern extension of the south boundary of Lot 53), Square 290 (northern half, that is, Lot 43), and Square 224 (Lot 824);
- (c) Property in other squares and any building in the SHOP District having six (6) floors or less at and above grade shall devote not less than 1.5 FAR equivalent to preferred uses; and
- (d) In the applicable sector of the Downtown Arts District, that is, Squares 254, 290, 321, 347, 377, 376 and 375 (south of G Place), uses which are set forth in Section 1711 shall comprise not less than fifty percent (50%) of the floor area required to be devoted to preferred uses.

1703.4 A building that provides gross floor area for preferred uses of the required 1.5 or 2.0 FAR equivalent, and which includes any of the bonus uses indicated below, may count the floor area devoted to such use or uses at the bonus ratio

indicated for the purpose of earning bonus density:

	Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a) Department Store	1	to	3
(b) Legitimate Theater	1	to	2
(c) Anchor store; movie theater; performing arts space; small, minority or displaced business	1	to	1

1703.5 In the ARTS District sector of SHOP, as identified geographically in paragraph 1703.3(d), a building shall be eligible for the bonuses specified in paragraphs 1704.6(a), (b) and (c).

1703.6 If a building in the SHOP District uses bonus density, the maximum permitted FAR shall be 10.5 for a building permitted a height of 130 feet and 9.5 for a building permitted a lesser height.

1704 DOWNTOWN ARTS DISTRICT

1704.1 The policies and objectives for the Downtown Arts District, as defined in the Comprehensive Plan, including the Gallery Place subarea of Downtown and portions of the Retail Core, Market Square, Convention Center and Chinatown subareas, are to:

- (a) Retain, expand and support a concentration of spaces and activities for the arts and artists, including the performing and visual arts, cultural facilities, entertainment and arts-related retail uses;

- (b) Create two strong arts-entertainment corridors within this area: a spine of theaters, movie theaters, restaurants, nightclubs and arts-related retail uses along E Street from 6th to 14th Street, N.W.; and a pedestrian-oriented concentration of museums, art galleries, other performing or visual arts uses, and festive retail-entertainment uses along 7th Street from Pennsylvania Avenue to north of G Street; and
- (c) Encourage the general development pattern indicated in the Comprehensive Plan for the Arts District east of the Retail Core, specifically a mixture of residential, office and hotel development on upper floors of buildings, with arts, specialty retail and entertainment uses predominating on the lower levels of the buildings.

1704.2 The provisions of this section apply to properties in the following squares and portions of squares: 291, 322, 348, 406, 407, 408, 431, 432, 455, 456, 457, 458, 459, 460, and those portions of squares 405, 429, and 454 that are south of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.

1704.3 Each new or altered building shall devote not less than 1.0 FAR equivalent to arts and entertainment-related uses from Section 1711 and retail and service uses from Section 1710; provided that:

- (a) Not less than 0.25 FAR equivalent of the required space shall be devoted to one or more of the following uses: art center, art exhibition area, art gallery, art school, artist live-work space, artist studio, performing arts space, cabaret, dance hall, dinner theater, legitimate theater, movie theater, museum, or television and radio broadcast studio;
- (b) A building may comply with requirements of this subsection by devoting 0.5 FAR equivalent to uses listed in paragraph (a), in which case the 1.0 FAR equivalent of total preferred uses is not required, and bonus

density is earned in excess of the 0.5 FAR equivalent of uses from paragraph (a);

- (c) A building that provides 1.5 FAR or more of residential uses shall have a reduced requirement of 0.5 FAR equivalent of preferred uses from Sections 1710 and 1711, of which no less than fifty percent (50%) shall be Section 1711 uses;
- (d) Squares located in both the Arts District as delineated in the Comprehensive Plan and the SHOP District shall be subject to the arts and retail provisions of Section 1703, SHOP District, as specifically provided in Paragraph 1703.3(d); and
- (e) A building located on a lot of 5,000 square feet or less and having a height of six (6) floors or less at and above grade shall have a preferred use requirement of not less than 0.75 FAR equivalent of uses from Sections 1710 and 1711 combined, and shall not have a residential use requirement as provided in Section 1706.

1704.4 An unenclosed sidewalk cafe shall count towards the preferred use requirement of Subsection 1704.3, exclusive of paragraph (a); provided, that:

- (a) The countable sidewalk or atrium area for this purpose shall not exceed 1,000 square feet; and
- (b) Sidewalk or atrium area on the lot or on adjacent public space is countable as a restaurant use provided that the sidewalk cafe is operated from a restaurant located on the subject lot.

1704.5 An art exhibition area shall count towards the preferred use requirement of Subsection 1704.3 exclusive of Paragraph (a); provided, that:

- (a) The countable area for this purpose shall be not more than twenty percent (20%) of the total requirement for preferred uses specified in Subsection 1704.3;

- (b) The space shall be open to the public during normal business hours at least five (5) days per week and fifty (50) weeks per year;
- (c) The art exhibitions shall be curated by an art gallery or a professional curator;
- (d) The exhibitions shall change at least four times per year with the exception that up to twenty percent (20%) of the art works may be a permanent exhibition; and
- (e) At least two of the exhibits, or a majority of the total art works displayed on an annual basis shall be offered for sale to the public.

1704.6 A building which provides the required 1.0 gross floor area equivalent for preferred uses specified in Subsection 1704.3, and which includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor area earned for on-site or off-site development
(a) Art center, art school, performing arts space, legitimate theater or museum, in excess in each of 40,000 case s.f. of gross floor area as provided in Subsection 1704.8	1	to	3
(b) Art Gallery or Museum located on 7th or G Street;	1	to	2

legitimate theater,
artist studio,
artist live-work
space, art center,
art school,
performing arts and
rehearsal space

- (c) Uses listed in 1 to 1
1704.3(a); small,
minority or
displaced business;
and
- (d) Other uses from 1 to 0.5
sections 1710 and
1711, in excess of
the 1.0 FAR
equivalent required
by Subsection 1704.3,
not to be counted in
addition to bonus
floor area from
paragraphs (a)
through (c) of this
Subsection

1704.7 An art center or art school may qualify for this
bonus despite being located in more than one
building; provided, that:

- (a) The buildings are located within a radius of
2,000 feet of the centermost building; and
- (b) The art school or art center shall be
operated under centralized management as a
single institution.

1704.8 Bonus density from arts uses not to exceed 0.5 FAR
may be used to develop office space in lieu of
residential space as required in Section 1706 of
this chapter.

1704.9 A nonprofit arts use shall be entitled to
twenty-five percent (25%) of density bonus in
excess of the bonus ratio indicated in Subsection
1704.6.

1704.10 Floor area devoted to an arts use listed in

paragraph 1704.3(a) that has a ceiling height greater than twelve feet (12') shall count towards the minimum required square footage at a rate of one-and-one-half times the actual floor area devoted to the use.

1705 CHINATOWN

1705.1 The principal policies and objectives from the Comprehensive Plan for the Chinatown area are to:

- (a) Protect and enhance Chinatown as Downtown's only ethnic cultural area;
- (b) Maintain and expand the existing concentration of retail uses emphasizing Chinese and Asian merchandise and related wholesale operations serving residents, visitors, tourists and business travelers;
- (c) Reinforce the area's economic viability by encouraging mixed use development, including substantial housing; cultural and community facilities; offices; retail and wholesale businesses; and hotels; and
- (d) Protect existing housing and the most important historic buildings with suitable preservation controls, residential and commercial zones and economic incentives.

1705.2 The provisions of this section apply to properties in the following squares: 428, 452, 453, 485, and 486, and those portions of squares 429 and 454 that are north of a line extending the midpoint of G Place eastward from 9th Street to 6th Street.

1705.3 Each building that fronts on H Street from 5th to 8th Street, on 7th Street for a distance of one-half (1/2) block north and south of H Street, or on 6th Street for a distance of one-half (1/2) block south of H Street, shall devote not less than 1.0 FAR equivalent to retail service and entertainment uses from Sections 1710 and 1711 and wholesaling accessory to those uses; provided, that this requirement shall be 0.5 FAR equivalent for a building that fronts on any other street segment in Chinatown or for a building that

provides on-site or off-site, a residential component as required by Section 1706.

1705.4 In Square 485, a residential building that is brought up to building code and is covenanted to continue in residential use for twenty (20) years or longer shall be eligible for transferable development rights equal to the floor area maintained in residential use.

1705.5 A building that provides the required 1.0 gross floor area equivalent for preferred uses specified in subsection 1705.3, and that includes any of the bonus uses indicated below, may count the gross floor area equivalent devoted to such use or uses at the bonus ratio indicated for the purpose of earning bonus density:

	Space Devoted to the bonus use		Proportionate number of square feet of additional gross floor		area earned for on-site or off-site development
(a) Uses from	1	to	1		
sections					
1710 and 1711,					
in excess of the					
1.0 FAR equivalent					
required by					
paragraph 1705.3					
(b) Small, minority	1	to	1		
or displaced					
business					

1706 RESIDENTIAL AND MIXED USE DEVELOPMENT

1706.1 The policies and objectives for residential use and development in and near Downtown as specified in the Comprehensive Plan are to:

- (a) Encourage construction of new housing and retention of existing housing so that a

sizeable residential component is created that will help accomplish the balanced mixture of uses essential to a "Living Downtown";

- (b) Create the greatest concentration of housing in the Mount Vernon Square area;
- (c) Encourage residential and mixed use development along Massachusetts Avenue;
- (d) Promote mixed use development including residential use south of Massachusetts Avenue, extending to the south through Judiciary Square north, Chinatown, and Gallery Place; and
- (e) Support the significant residential development in the Market Square subarea in the 7th Street and Pennsylvania Avenue area.

1706.2 The housing requirements and incentives of this section shall be applicable only in the Housing Priority Area, which is depicted in Map B and which is described by squares in Subsection 1706.8.

1706.3 Each lot in the Housing Priority Area shall provide on-site or account for off-site by combined lot development residential use and development as provided in this section.

1706.4 In the DD/C-2-C zone the following residential and mixed use provisions shall apply:

- (a) The maximum FAR shall be 8.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
- (b) Each lot shall provide on-site or account for off-site in a combined development no less than 4.5 FAR of residential use;
- (c) On a lot that is south of Massachusetts Avenue, up to 1.8 FAR this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed

further by the provisions of this section;

- (d) On a lot that is north of Massachusetts Avenue, up to 1.35 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and
- (e) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 1.8 FAR south of Massachusetts Avenue or 1.35 FAR north of Massachusetts Avenue.

1706.5 In the DD/C-3-C zone the following residential and mixed use provisions shall apply:

- (a) The maximum FAR shall be 9.5 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
- (b) Each lot shall provide on-site or account for off-site in a combined lot development no less than 3.5 FAR of residential use;
- (c) On a lot that is south of Massachusetts Avenue, up to 1.4 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section;
- (d) On a lot that is north of Massachusetts Avenue, up to 1.05 FAR of the residential requirement may be met by constructing or financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and
- (e) If such affordable housing is provided off-site pursuant to paragraph (c) or (d) of

this subsection, commercial or nonresidential FAR may be substituted on-site, or in a combined lot development, by the same amount of gross floor area as the affordable housing, up to the maximum limit of 1.4 FAR south of Massachusetts Avenue or 1.05 north of Massachusetts Avenue.

1706.6 In the DD/C-4 zone the following residential and mixed use provisions shall apply:

- (a) The maximum FAR shall be 10.0 as a matter-of-right, which FAR may be devoted to all residential use or may include commercial or nonresidential uses as provided in this subsection;
- (b) Each building shall provide on-site or account for off-site in a combined lot development no less than 2.0 FAR of residential use;
- (c) Up to 0.8 FAR of this residential requirement may be met by constructing or by financially assisting affordable housing as defined in this chapter and as governed further by the provisions of this section; and
- (d) If such affordable housing is provided off-site, commercial or nonresidential FAR may be substituted on-site or in a combined lot development by the same amount of gross floor area as the affordable housing up to the maximum limit of 0.8 FAR.

1706.7 The maximum permitted gross floor area may be increased by 0.5 FAR up to a maximum of 8.5 FAR in the DD/C-2-C District, 10.0 FAR in the DD/C-3-C District, and 10.5 FAR in the DD/C-4 District; provided, that:

- (a) The increase in gross floor area may be achieved by receiving transferable development rights as provided in Section 1709, which floor area may be devoted to any permitted use on the receiving site;
- (b) The increased gross floor area may be entirely devoted to residential use; and

- (c) The increase may be earned by constructing or assisting affordable housing as defined in this chapter and as further governed by the provisions of this section, or by earning retail bonus density as provided in paragraph 1706.16.

1706.8 For the purposes of permitting and governing combined lot developments as provided by Section 1708, the Housing Priority Area is divided into three (3) subareas as follows:

- (a) Housing Priority Area A, the Mount Vernon Square North area, is located north of Massachusetts Avenue and comprises the DD/C-2-C and DD/C-3-C zoned squares and parts of squares numbered 369, 370, 401, 402, 425, 426, 450, 451, 483, 484, W484, 514, 515, N515, 516, S516, 525, 526, 527, 528, 556, and 558;
- (b) Housing Priority Area B, the Mount Vernon Square South area, comprises the DD/C-2-C and DD/C-3-C zoned properties that are located south of Massachusetts Avenue, including squares and parts of squares numbered 247, 283, 284, 316, 342, 371, 372, 452, 453, 485, 486, 517, and 529; and
- (c) Housing Priority Area C, the Downtown Core area, comprises the DD/C-4 zoned properties that are located south of H Street, including squares and parts of squares numbered 406, 407, 408, 454, 455, 456, 457, 458, 459, and 460.

1706.9 Combined lot development as authorized and governed by Section 1708 may be used by two or more properties within any one of the three identified Housing Priority Areas, but not by properties in different Housing Priority Areas.

1706.10 A residential building in existence as of the effective date of this chapter shall be eligible to count its gross floor area towards the residential use requirements of this section; provided, that:

- (a) The building shall be continued in residential use, or, if vacant, shall be

brought up to building code and covenanted to continue in residential use for twenty (20) years or longer;

(b) If the residential gross floor area of the building is less than the residential use requirement of the lot, there shall be no additional residential requirement for that lot; and,

(c) If the residential gross floor area of the building exceeds the required amount of residential use for the lot, the excess gross floor area may be used in a combined lot development to help meet the residential requirement of another lot or lots.

- 1706.11 No minimum residential use requirement shall apply in Square 485.
- 1706.12 Bonus density derived from arts uses in the Arts District pursuant to Sub-section 1704.6 and bonus density derived from the bonus provisions of Sub-section 1705.5 pertaining to the Chinatown subarea may be used to substitute office space for up to 0.5 FAR of residential use as required by this section.
- 1706.13 If a development project includes both required residential uses and nonresidential uses, whether on the same lot or in a combined lot development, no Certificate of Occupancy shall be issued for the nonresidential space until a Certificate of Occupancy has been issued for the residential space.
- 1706.14 In the Housing Priority Area the maximum height of a building shall be as provided in Sub-sections 1701.6 and 1706.15 of this chapter.
- 1706.15 A building constructed on a lot fronting on M Street shall be limited to a maximum height of sixty (60) feet to a depth of forty (40) feet from the lot line on M Street.
- 1706.16 In Housing Priority Area A, for each square foot of gross floor area devoted to one of the preferred uses listed below, the project shall earn one square foot of bonus gross floor area:

- (a) Grocery store;
 - (b) Dry cleaner or laundry;
 - (c) Drug store;
 - (d) Hardware store;
 - (e) Variety store; and
 - (f) Child development center.
- 1706.17 In Housing Priority Areas B and C, each square foot of grocery store use shall earn two (2) square feet of bonus floor area.
- 1706.18 Renovation of a nonresidential building in existence as of the effective date of this chapter and having a height of six (6) floors or less at and above grade shall not trigger a housing requirement as provided in this Section.
- 1706.19 A hotel or inn established pursuant to special exception approval in an SP District shall be deemed a conforming use in a DD/R-5 Zone. The hotel or inn shall continue to be governed by the conditions of the Board of Zoning Adjustment Order granting the use. Enlargement or other changes shall be governed by Subsection 3107.2 of this title.
- 1706.20 These residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to Sub-section 1707.4.
- 1706.21 RESERVED
- 1707 HISTORIC PRESERVATION
- 1707.1 The most directly applicable policies and objectives from the Comprehensive Plan and other adopted policies for Downtown may be summarized as follows:
 - (a) Preserve the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site;
 - (b) Encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts,

together with compatible alterations and compatible new construction;

- (c) Restrict permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a suitable scale of new construction in historic districts, especially in projects combining new development with preservation;
- (d) Permit flexibility as to building height, rear yard and court requirements so as to allow maximum design flexibility for the massing and sculpting of the restricted building mass in relationship to the scale and character of affected historic buildings on the lot and nearby subject to the exterior design review and controls exercised by the Historic Preservation Review Board;
- (e) Provide appropriate economic incentives to encourage preservation, including suitable on-site density and transferable development rights; and
- (f) Encourage occupancy of historic buildings by active uses such as arts, cultural, entertainment, retail and small business uses, in keeping with the potential of historic buildings to make multiple contributions to the character of a "Living Downtown."

1707.2 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.

1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements and incentives provided in Sections 1703 through 1706 of this chapter.

1707.4 The permitted on-site floor area ratio (FAR) for any permitted use shall be 6.0 on each of the lots and squares listed below; provided that in a multi-lot development or combined lot development within a single square, the permitted 6.0 FAR may be averaged with the permitted FARs of other lots

that are part of the development, so as to achieve a composite FAR for the entire development.

- (a) Square 320, Lots 17, 800, 808, 809, and 810;
- (b) Square 346;
- (c) Square 347, Lots 18, 189, 800 through 801, and 818 through 826;
- (d) Square 376, Lots 36 through 46, 48, 63, 64, 70, 801, 802, and 803 ;
- (e) Square 377, Lots 35, 819 through 821, 823 through 829, 846, and 847;
- (f) Square 406, Lots 11, 15, 807, 808, 809, and 814;
- (g) Square 428, Lots 16, 17, 801, 802, 803, 804, and 808 through 815;
- (h) Square 429;
- (i) Square 452, Lots 26 through 29, 800, 802 through 806, and 817 through 824;
- (j) Square 453, Lots 24 through 31, 40, 50, 811, 812, 813, 815 through 819, 821, 831 through 834, 839 (48), and 842 ;
- (k) Square 454, Lots 827 and 829 through 835;
- (l) Square 518, Lots 845 through 855.
- (m) Square 405, Lot 839;
- (n) Square 408, Lot 820;
- (o) All of Square 429 1/2;
- (p) All of Square 430;
- (q) Square 431, Lots 23, 806, 807, 814, 815, 816, and 822;
- (r) Square 432, Lots 809, 810, 811, 812, Part of Lot 815, and 816;
- (s) Square 458, Lots 7, 8, 807, 809, 810, 811, 812, 818, 816, 820, 821, 822, and 823;
- (t) Square 459, Lot 809;
- (u) Square 460, Lots 802, 803, 804, 805, and 808;
- (v) All of Square 485;
- (w) Square 517, Lots 20, 46, 834, and 835;
- (x) Square 457, Lots 36, 822, 823, 824, 825, 826, 871, and 872;

1707.5 A project in the Downtown Historic District, the Pennsylvania Avenue Historic Site, or an individual historic landmark is not eligible to construct bonus density on-site, but may transfer bonus density to other sites in the Downtown Development (DD) District, or to sites in a receiving zone as delineated in Section 1709; provided, that:

- (a) The preserved building or part thereof shall be a historic landmark or shall be building within the Downtown Historic District or the Pennsylvania Avenue Historic site, which has been preserved in whole or in part pursuant to D.C. Law 2-144 and regulations pursuant thereto;
- (b) The property shall be one of those properties identified in subsection 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions;
- (c) Undeveloped gross floor area of up to 4.0 may be transferred from the historic sending lot to a lot or lots elsewhere in the DD District or in a receiving zone; provided, that:
 - (1) Each (1) square foot of unused density less than the matter-of-right commercial density of the underlying zone shall earn one (1) square foot of transferable development rights; and,
 - (2) The matter-of-right densities of the applicable underlying zones are deemed to be 10.0 or 8.5 FAR in the DD/C-4 District pursuant to Subsections 771.2 and 771.5 of this title, 6.5 FAR in the DD/C-3-C District and 2.0 FAR in the DD/C-2-C District.
- (d) Prior to the execution of a covenant transferring floor area, as provided in paragraphs 1708(h) through (p) the owner of the sending site shall have restored the historic building, buildings or parts thereof, pursuant to plans approved by the Historic Preservation Review Board; provided, that in the alternative, the Historic Preservation Review Board may certify to the Zoning Administrator that an acceptable timetable for restoration of the historic building has been agreed to by the applicant, together with suitable enforcement measures.
- (e) A historic building that has been renovated or restored pursuant to approval of the

Historic Preservation Review Board approval within a 10-year period prior to the effective date of this chapter shall not be eligible to earn transferable development rights; and

- (f) Bonus density, if any, generated by bonus uses on the sending lot may be transferred in addition to the transferable development rights provided in this subsection for restricted density on the historic site.

1707.6 The rear and side yard requirements of the underlying zone district shall not apply in the Downtown Historic District or Pennsylvania Avenue Historic Site.

1707.7 A historic landmark or a contributing building in a historic district that has a gross floor area in excess of the 6.0 FAR limit specified in Subsection 1707.4 shall be permitted to occupy all floors of the building for permitted uses.

1708 COMBINED LOT DEVELOPMENT

1708.1 Two or more lots may be combined for the purpose of achieving the required FAR equivalent for preferred uses or to transfer bonus density from one lot to one or more other lots; provided, that:

- (a) The lots may be located in the same square or in different squares;
- (b) A combined lot development shall be eligible for the density and area allowances permitted in Sections 1703, 1704, 1705, and 1706;
- (c) When combined lot development involves only linkage, i.e., the allocation of gross floor area required by this chapter to be devoted to preferred uses, such combined lot developments shall be limited to lots located within the same subarea as defined in each of the following Sections of this chapter: 1703, 1704, 1705 and 1706;

- (d) When combined lot development involves a transfer of bonus density to another lot or lot, by itself or in addition to linkage, such density transfer may occur to any lot or lots within the DD District or in a receiving zone as provided in Section 1709 of this chapter, except as excluded by other provisions of this chapter and title;
- (e) The maximum permitted floor area for all uses, the minimum required floor area for preferred uses, and bonus density, if applicable, shall each be calculated as if the combined lots were one lot, and the total project shall conform with the maximum and minimum floor area requirements;
- (f) The required floor area to be devoted to preferred uses may be transferred from the sending lot to a receiving lot, on which the required space for preferred uses shall be incorporated into the building design and occupied; provided, that any applicable ground level uses required on any affected lot shall not be transferred, but shall be provided on each sending lot and receiving lot;
- (g) The Certificate of Occupancy for the development sending FAR for preferred uses to another development may be revoked, if no building permit for the receiving site has been issued to the developer within three years after the issuance of the Certificate of Occupancy for the sending site, or if no Certificate of Occupancy for the receiving site has been issued within five years after the issuance of the Certificate of Occupancy for the sending site;
- (h) No transfer of required gross floor area for preferred uses or of bonus floor area, shall be effective under this section unless an instrument, legally sufficient in both form and content to effect such a transfer in a form approved by the Corporation Counsel, and in content approved by the Director, Office of Planning and the Zoning Administrator, has been entered into among all of the parties

concerned, including the District of Columbia;

- (i) In the case of historic preservation the instrument of transfer shall effect a binding reduction in the unused development rights under this zoning ordinance otherwise available to the sending lot, to the extent of the rights transferred;
- (j) In the case of bonus density derived from a use bonus, the instrument of transfer shall indicate the size of the applicable bonus use or uses in square feet of gross floor area and the location of bonus uses by reference to appropriate plans, and shall effect a requirement that bonus uses shall continue in operation on the sending lot;
- (k) The instrument of transfer shall increase the development rights under this zoning ordinance otherwise available to the receiving lot, to the extent of the rights transferred;
- (l) If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer;
- (m) A certified copy of the instrument of transfer shall be filed with the Zoning Administrator, Department of Consumer and Regulatory Affairs, prior to approval by said Department of any building permit application affected by such transfer;
- (n) The notice of restrictions and transfer shall run with the title and deed to each affected lot;
- (o) The document shall be recorded in the office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending

lot by virtue of this arrangement for transfer of required floor area or bonus floor area;

- (p) The notice of restrictions and transfer shall run with the title and deed to each affected lot; and
- (q) A building that has been constructed or that is under construction as of the effective date of this chapter is not eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.

1709 TRANSFERABLE DEVELOPMENT RIGHTS

- 1709.1 The combined lot development provision of Section 1708 may be used to transfer bonus floor area from a project within the DD District to a receiving lot or lots located in the Downtown East, New Downtown, or other receiving zones or sites pursuant to the provisions of this section.
- 1709.2 Transferable development rights shall be generated either by bonus uses pursuant to the subarea provisions of Sections 1703 through 1705 of this chapter, or by historic preservation as provided in Section 1707.
- 1709.3 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, 627, and 628 through 631.
- 1709.4 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118.
- 1709.5 If the height of a receiving building exceeds the height that the provisions of this title allow as a matter-of-right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane drawn at a forty-five (45) degree angle from a line that is:

- a) Directly above the zone district boundary line between such abutting lot and the receiving lot; and
- b) Above such boundary line by the distance of the matter-of-right height that this title allow as for such abutting lot.

1709.6 In the New Downtown receiving zones, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted floor area ratio shall be 10.0 for buildings permitted a height of 130 feet, and 9.0 for buildings permitted a lesser height.

1709.7 In the New Downtown receiving zone the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.

1709.8 In the Downtown East receiving zone the maximum permitted gross floor area for any permitted uses shall be 9.0 and the maximum permitted building height shall be one hundred ten feet (110').

1709.9 In addition to the matter-of-right transfers authorized by this Section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving site for transferable development rights; provided that:

- (a) The Planned Unit Development shall be located in a receiving zone or in a DD/C-2-C, DD/C-3-C or DD/C-4 zone;
- (b) The maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; and the maximum permitted gross floor area shall be 10.5 for buildings permitted a height of 130 feet and 9.5 for buildings permitted a lesser height; and
- (c) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved prior to October, 1989, nor to an historic landmark or a lot in an historic district.

1710 RETAIL AND SERVICE USES

1710.1 For the purposes of this chapter, the following uses are preferred retail and personal/consumer service uses:

- (a) Anchor Store
- (b) Antique Store
- (c) Apparel and Accessories Store
- (d) Appliance Store
- (e) Auction House
- (f) Auto and Home Supply Stores, excluding installations
- (g) Bank Loan Office, Savings & Loan, Credit Union, or Other Financial Institution
- (h) Bakery, limited to baking of food sold on premises
- (i) Bicycle Shop
- (j) Barber or Beauty Shop
- (k) Candy Store
- (l) Child Development Center
- (m) Computer Store
- (n) Cosmetic Store
- (o) Camera Store
- (p) Delicatessen
- (q) Department Store
- (r) Dressmaking or Tailor Shop
- (s) Drug Store
- (t) Dry Cleaners
- (u) Fabric Store
- (v) Fast Food Restaurant, excluding drive-through
- (w) Florist and Plant Stores
- (x) Furniture Store
- (y) Gift, Novelty and Souvenir Shop
- (z) Grocery Store

- (a) (a) Hardware Store
- (b) (b) Health or Exercise Studio
- (c) (c) Hobby, Toys and Game Shop
- (d) (d) Home Furnishings Store
- (e) (e) Jewelry Store
- (f) (f) Liquor Store
- (g) (g) Luggage and Leather Goods Store
- (h) (h) Newsstand
- (i) (i) Office Supplies and Equipment Store
- (j) (j) Optician
- (k) (k) Paint Store
- (l) (l) Pet Store
- (m) (m) Printing, Fast Copy Service
- (n) (n) Radio, Television and Consumer

- Electronics Store
- (o) (o) Secondhand Store
- (p) (p) Shoe Repair and Shoeshine Parlor
- (q) (q) Shoe Store
- (r) (r) Specialty Food Store
- (s) (s) Sporting Goods Store
- (t) (t) Telegraph Store
- (u) (u) Tobacco Store
- (v) (v) Travel Agency, Ticket Office
- (w) (w) Variety Store
- (x) (x) Video Tape Rental; and
- (y) (y) Other similar personal/consumer service establishment or retail uses, including assemblage and repair clearly incidental to the principal use.

1711 ARTS USES AND ARTS-RELATED USES

1711.1 For the purpose of this chapter, the following uses are preferred arts uses and arts-related retail and support uses:

- (a) Art Center
- (b) Art Exhibition Area
- (c) Art Gallery
- (d) Art School, including school of dance, photography, filmmaking, music, writing, painting, sculpturing, or printmaking
- (e) Artist Live-work space
- (f) Artist Studio
- (g) Artists' Supply Store
- (h) Arts Organizations, Administrative Offices of
- (i) Arts Services, including set design, and restoration of art works
- (j) Assembly hall, auditorium, public hall, or other performing arts space, including rehearsal/pre-production space or concert hall
- (k) Book Store
- (l) Cabaret
- (m) Dance Hall, Discotheque, or Ballroom
- (n) Dinner Theater
- (o) Drinking Place, including bar, nightclub, or cocktail lounge
- (p) Legitimate Theater
- (q) Movie Theater
- (r) Museum
- (s) Performing Arts Ticket Office or Booking

- Agency
- (t) Photographic Studio
- (u) Picture Framing Shop
- (v) Record Store, Musical Instruments Store
- (w) Restaurant; and
- (x) Television and Radio Broadcast Studio

1712 OFFICE SPACE USES

1712.1 For the purposes of this chapter, the following users are office space uses and not preferred uses:

- (a) Accountant
- (b) Architect
- (c) Attorney
- (d) Bail Bondsman
- (e) Counseling Service
- (f) Consultant - General
- (g) Dentist, Doctor, or Medical Office
- (h) Employment Agency
- (i) Escrow Agent
- (j) Government
- (k) Health Clinic
- (l) Insurance Broker
- (m) Laboratory
- (n) Landscape Architect
- (o) Mortgage Broker
- (p) Real Estate Agent, Appraiser, Broker, Developer
- (q) Stockbroker
- (r) Tax Preparer
- (s) Title Company
- (t) Trust Company; and
- (u) Utility Company, Offices of

1799 DEFINITIONS

1799.1 For purposes of this chapter, the following definitions shall apply:

Anchor store - a single retail store, having between 60,000 and 90,000 square feet of gross leasable area, and which is operated under a single Certificate of Occupancy;

Art center - A multifunctional arts use that: (a) comprises two or more distinct arts uses integrated under single management and a single Certificate of Occupancy; (b) includes but is not limited to uses such as art gallery, artist studio, art school, performing arts space, administrative offices of arts organizations, movie theater, artist live-work space; (c) occupies part or all of a single building or a group of buildings that are within a radius of 2,000 feet of the centermost building;

Art exhibition area - a building lobby or part of a lobby, or another publicly accessible room on the basement, first or second floors of a building, which space is designed and used for the public display and sale of works of art;

Department store - a single retail store, in excess of 90,000 square feet of gross leasable area, that: (a) is involved in the sale of, among other things, apparel and furnishing; (b) is organized into departments or sections which are integrated under single management; and (c) is operated under a single Certificate of Occupancy;

Displaced downtown business - a business which occupies a building on or after the date on which a demolition permit has been issued for that building, or which occupied a building which was demolished after January 1, 1986;

Gross leasable area - the sum of the floor area occupied by the business or use, as measured from the exterior faces of the walls encompassing the space, and including any stairways, elevator shafts, escalators, or mechanical areas inside the perimeter walls of the business use. In a building occupied by multiple tenants or multiple uses, the central elevator core or cores, associated lobbies, stairways, and mechanical areas shall be excluded from gross leasable area, if they serve the building as a whole;

Minority business - a Certified Minority Business as designated by the District of Columbia Minority Business Opportunity Commission;

Net leasable area - the sum of the floor area occupied by the business or use, as measured from

the interior faces of the walls encompassing the space, and excluding any portion of the space devoted to mechanical equipment, lobby area, stairways, or elevators, if that portion of space serves the building as a whole;

Performing arts center - one or more facilities that provide space for the performing arts, including but not limited to concert halls and legitimate theaters;

Residential uses - those uses defined in section 199 of this title as apartments, apartment houses, bachelor apartments, and rooming and boarding houses; and

Small business - a business which occupies 2,000 square feet or less of net leasable area and which provides evidence of not being franchise - operated.

2. Amend the Zoning Map as follows:

A. Rezone to DD/R-5-B:

1. Square 482;
2. In Square 449, those Lots and portions of Lots now zoned R-5-D;
3. In Square 514, Lots 26, 27, 44, 45, 47, 51 through 53, 56, 57, 62 through 66, 77, 80, 81, 813 through 815, 817, 824 through 830, 832 through 850, and 855 through 860; and
4. In Square 524, Lots 4, 5, 14 through 19, 801, and 804.

B. Rezone to DD/R-5-~~D~~^E:

1. All of Squares 282, 315 and 341;
2. In Square 246, Lot 806;
3. In Square 247, those lots now zoned SP-2 (without HR overlay);
4. In Square 283, Lots 826 and 827;

5. In Square 485, those lots north of the east-west alley;
6. In Square 517, Lot 49; and
7. In Square 453, Lot 52.

C. Rezone to DD/C-2-C:

1. All of Squares numbered 401, 425, 451, 483, 484, 486, 515, N515, 516, S516, 525 through 529, 556, and 558;
2. In Square 369, those lots now zoned SP-2;
3. Those lots now zoned HR/SP-2 in Squares numbered 247, 283, 284, 316, 342, 370, 371, and 518;
4. In Square 485, those lots south of the east-west alley;
5. In Square 450, Lots 4, 6, 22 through 25, 33, 35, 812 through 818, 820, 821, 825, and 830 through 832;
6. In Square 517, all lots except Lot 49;
7. In Square 449, those lots and portions of lots now zoned C-2-C;
8. In Square 514, Lots 5, 40 through 43, 58 through 61, 67, 68, 78, 800 through 807, 851, 853, and 854; and
9. In Square 524, Lots 3, 6 through 13, and 803.

D. Rezone to DD/C-2-A:

In Square 369, those lots now zoned C-2-A.

E. Rezone to DD/C-3-A:

In Square 450, Lots 15 through 17, 20, 21, 34, 37, and 805 through 811.

F. Rezone to DD/C-3-C:

1. All of Squares numbered 317, 343, 344, 372 through 374, 402, 403, 404, 426, 427, 428, W484, 452, 453, 459, and 460; and
2. Those lots now zoned C-3-C in Squares numbered 284, 316, 342, and 371.

G. Rezone to DD/C-4:

1. All of Squares numbered 223, 224, 252, 253, 288, 289, 290, 319 through 321, 345 through 347, 375 through 377, 405 through 408, 429 through 432, and 454 through 458.

H. Rezone to DD/C-5:

1. All of Squares numbered 225, 254, 291, 322 and 348.

3. Insert new Section 3204, to read as follows:

3204 VESTING OF TRANSFERRED DEVELOPMENT RIGHTS

3204.1 Notwithstanding the provisions of subsections 3202.5 and 3202.6 of this title, gross floor area that is transferred pursuant to this title shall remain available for the life of the development on the receiving lot, subject to the following provisions:

- (a) Within thirty calendar days of the execution of the written agreement that effects the transfer, the parties to the transfer shall file a true copy of the agreement with the Zoning Administrator; and
- (b) The transfer agreement shall be valid for a period of 25 years after its execution, within which time an application shall be filed for each building permit that is required to implement the transfer.

4. Redesignate current section 3204 as Section 3205.

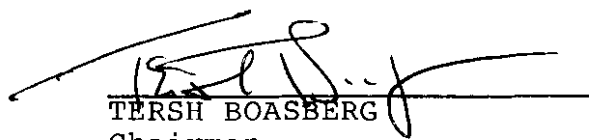
The Commission has determined that the changes made in the final rulemaking are not so substantive as to require a further notice of proposed rulemaking.

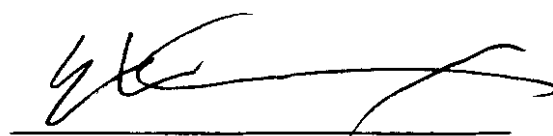
Vote of the Zoning Commission on proposed action on July 16, 1990, on Sections 1700.1 - 1700.6, 1701 - 1705, and 1707 - 1713: 5 - 0 (Tersh Boasberg, Lloyd D. Smith, Maybelle Taylor Bennett, John G. Parsons, and William E. Ensign to approve proposed action to amend the Zoning Regulations and Zoning Map.

Vote of the Zoning Commission on the remainder of Section 1700, and Section 1706, on September 17, 1990: 3-2 (Tersh Boasberg, John G. Parsons, and William Ensign to approve proposed action to amend the Zoning Regulations; Lloyd D. Smith, Maybelle Taylor Bennett, opposed).

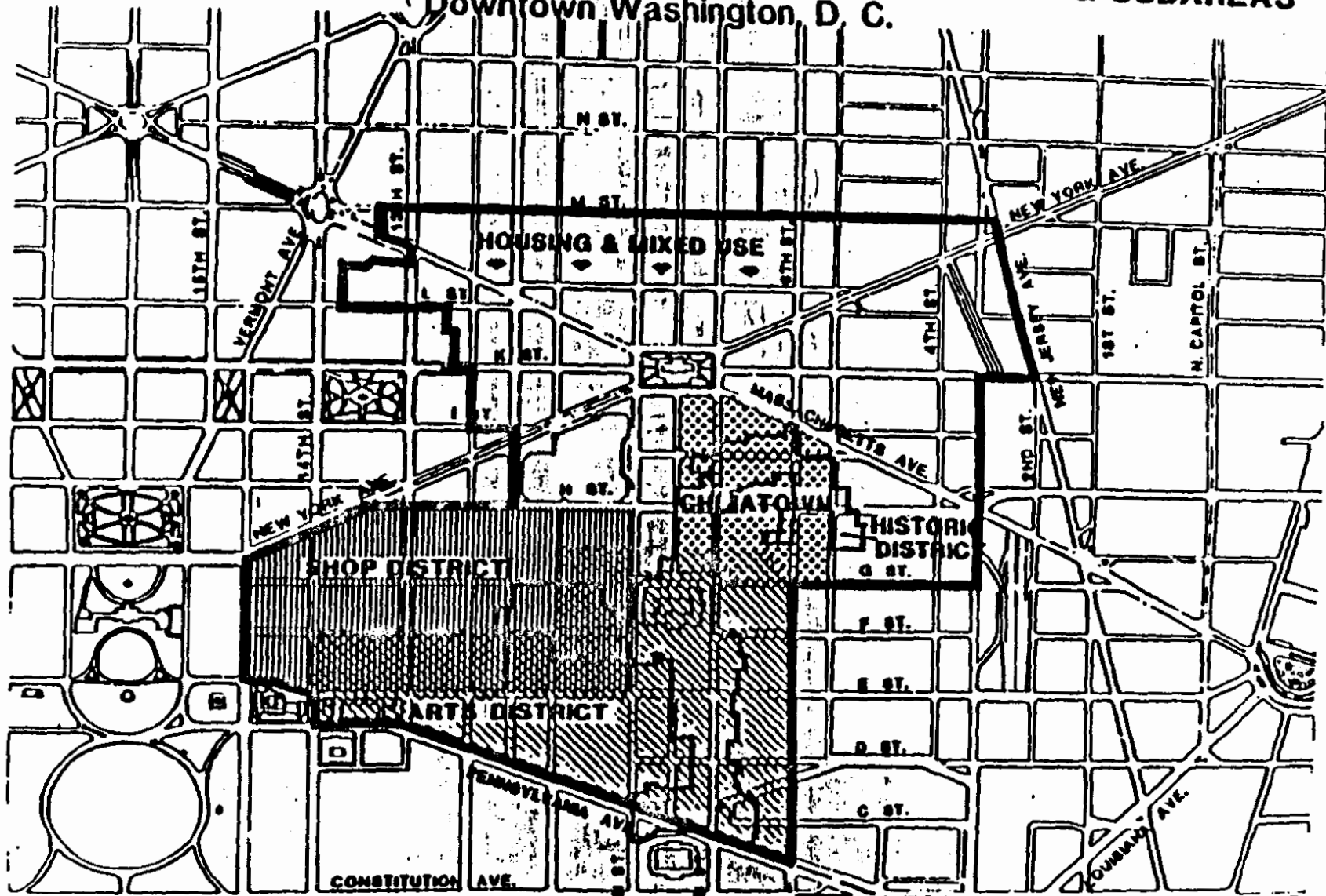
Vote of the Zoning Commission on December 17, 1990 to adopt this order and the foregoing amendments to the Zoning Regulations and Zoning Map, in part 3-2 and in part 5-0: (Tersh Boasberg, John G. Parsons, and William Ensign to adopt Sections 1706.4(c) and (d), 1706.5(c) and (d), and 1706.6(c), as revised; Maybelle Taylor Bennett and Lloyd D. Smith opposed; Tersh Boasberg, Lloyd D. Smith, Maybelle Taylor Bennett, John G. Parsons, and William Ensign to adopt the remaining amendments to Chapter 17, to adopt Section 3204, and to approve amendments to the Zoning Map.

In accordance with the 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on January 18, 1991.

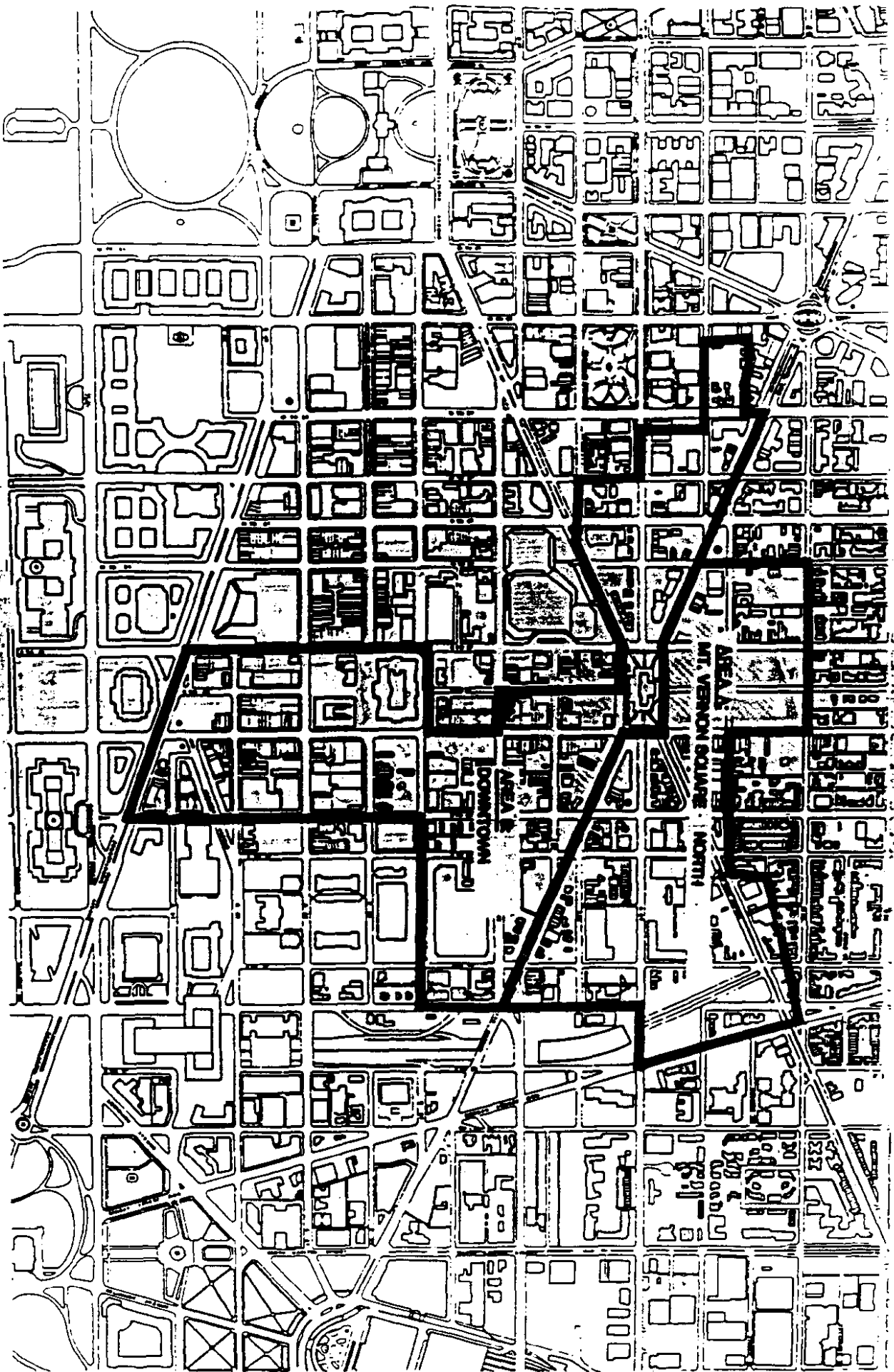

TERSH BOASBERG
Chairman
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat

MAP A:
DOWNTOWN DEVELOPMENT DISTRICT: MAJOR LAND USE & SUBAREAS
 Downtown Washington, D. C.



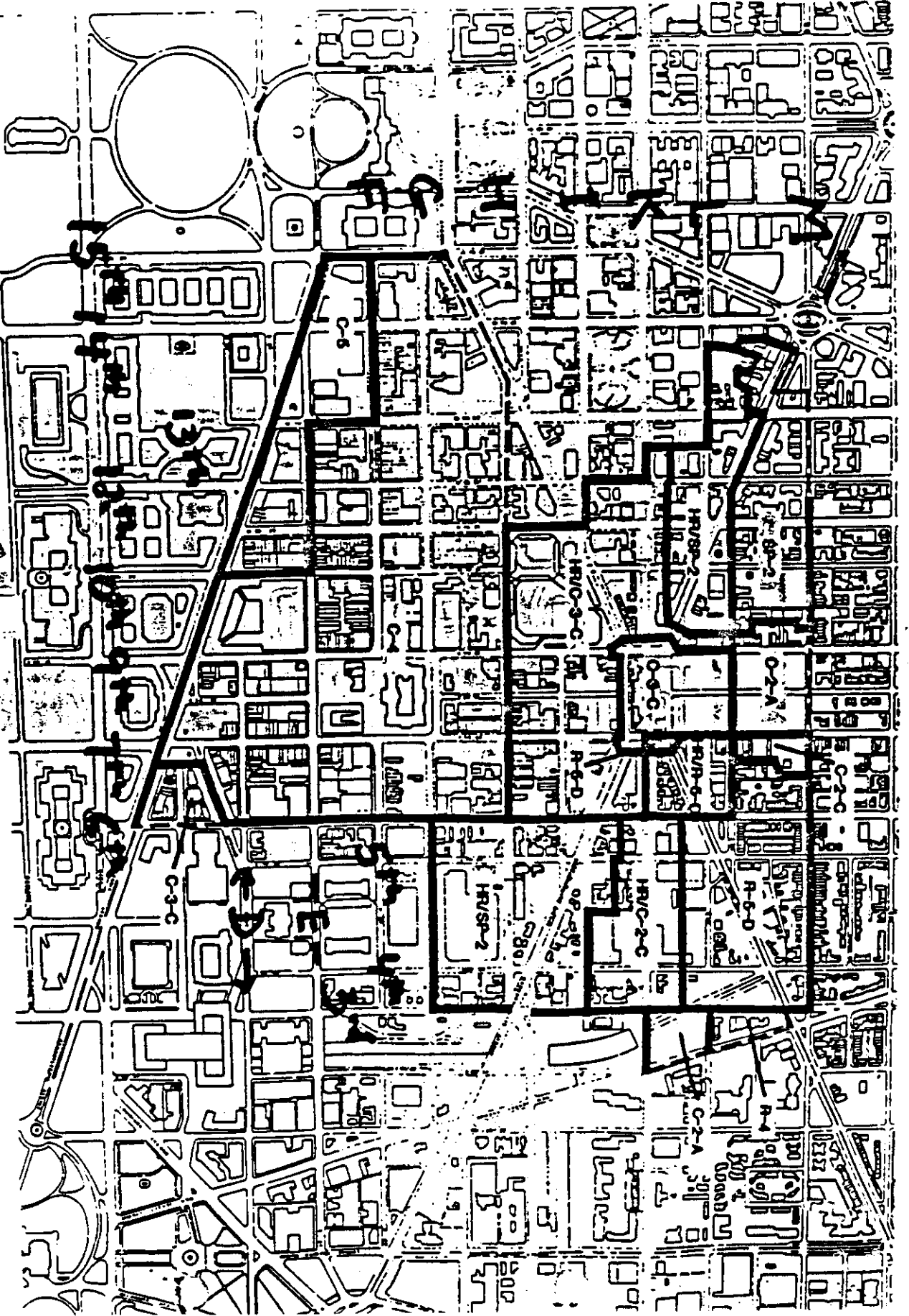
———— DOWNTOWN DEVELOPMENT DISTRICT BOUNDARY



HOUSING PRIORITY AREAS

MAP B





EXISTING ZONING
DOWNTOWN DEVELOPMENT DISTRICT



HOUSING PRIORITY AREAS
MAP B

